Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

CONGRESS OF CALIFORNIA SENIORS, ET AL.,

Petitioners,

v.

CHUCK QUACKENBUSH, INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The First Appellate District Of California

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DANIEL E. LUNGREN,
Attorney General
of the State of California
LINDA A. CABATIC,
Senior Assistant Attorney General
MARSHA A. BEDWELL,
Supervising Deputy Attorney General
EILEEN GRAY,
Supervising Deputy Attorney General
SHELLEYANNE W.L. CHANG,
Deputy Attorney General
LESLIE R. LOPEZ,*
Deputy Attorney General
1300 I Street, P. O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-0973
Facsimile: (916) 323-2137
Attorneys for Respondents
**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether Petitioners' facial challenge to an initiative adopted by California's voters, which alters the measure of tort damages uninsured drivers may recover, raises a substantial federal question warranting Supreme Court review.

PARTIES TO PROCEEDINGS

The parties to the Court of Appeal proceeding are the following:

Petitioners: Congress of California Seniors, Utility Consumer Action Network, Proposition 103 Enforcement Project, Southern California Organizing Committee, Consumer Attorneys of California, Latino Issues Forum, The Greenlining Institute, Howard Owens, Ina De Long, and David S. Casey, Jr.

Respondents: Chuck Quackenbush, Insurance Commissioner of the State of California; Peter G. Stamison, Director of the Department of General Services of the State of California; and Kathleen Connell, Controller of the State of California

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STATEMENT OF THE CASE

California Civil Code section 3333.4, "The Personal Responsibility Act of 1996," was enacted by the people of the State of California in November 1996 as part of Proposition 213, pursuant to their reserved power of initiative. Cal. Const., art. IV, § 1. Proposition 213 added a new section to California's Civil Code provisions governing tort damages. Among other things, the statute eliminates awards of noneconomic damages, i.e., "pain and suffering" damages to uninsured drivers, drunk drivers and felons. Cal. Civil Code, § 3333.4 (West 1997).

Following adoption of the initiative, on December 17, 1996, a lawsuit was filed by several organizations and three taxpayers in the California Superior Court in and for the City and County of San Francisco, challenging the uninsured motorist provisions of the statute. In their state court action, Petitioners named the Insurance Commissioner of the State of California, the Director of the California Department of General Services, and the Controller of the State of California as defendants. None of the Petitioners alleged that the statute has actually been applied to them.[1] On March 5, 1997, Respondents filed a Demurrer to the complaint and opposed issuance of a preliminary injunction.

In April 1997, the Superior Court overruled Respondents' Demurrer and issued an injunction prohibiting

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[1] Petitioners' complaint is devoid of any allegation that any named plaintiff is an uninsured driver who was involved in an automobile accident. Likewise, none of the hyperbolic stories depicted by plaintiffs are alleged to have actually happened to any named Petitioner.

"any expenditure of State funds or resources for the purpose of implementing" the uninsured motorist provisions of Proposition 213. (JA 529.) After the Superior Court issued its injunction, Respondents sought extraordinary writ relief from the California Court of Appeal in and for the First Appellate District. The California Court of Appeal unanimously agreed with Respondents, concluding that Petitioners' myriad constitutional challenges to the statute were not legally cognizable, and commanded the Superior Court to enter judgment in favor of Respondents. The Court of Appeal ordered the Clerk of the Court to issue his peremptory writ of mandate compelling the Superior Court to vacate its injunction and order overruling Respondents' demurrer without leave to amend and to enter a new order sustaining the demurrer without leave to amend.[2]

Quackenbush v. Superior Court, 60 Cal. App. 4th 454, 70 Cal. Rptr. 2d 271 (1997). Petitioners' request for review by the California Supreme Court, mustering only one vote for review, was summarily denied in March 1998.

As established below, the petition should be denied because Petitioners' facial challenge to the state statute raises no substantial federal question.

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[2] Consequently, this case never proceeded past the pleading stage and Petitioners' reliance upon "evidentiary" matters outside of the complaint is inappropriate.

REASONS FOR DENYING CERTIORARI

I. PETITIONERS' FACIAL CHALLENGE TO CALIFORNIA'S STATUTORY REVISION TO THE MEASURE OF TORT DAMAGES FAILS TO RAISE ANY SUBSTANTIAL FEDERAL QUESTION

The petition raises no substantial federal question and, consequently, this matter does not warrant Supreme Court review.

Proposition 213 reflects the "considered judgment" of the citizens of California who voted for it. *See, Gregory v. Ashcroft*, 501 U.S. 452, 471 (1991). California's initiative power is not "a right granted to the people, but a power reserved by them." *Associated Home Builders of the Greater East Bay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 591, 590 P.2d 473, 477, 135 Cal. Rptr. 41 (1976). Indeed, the California Supreme Court views the power of initiative as "one of the most precious rights of our democratic process. . . ." *Rossi v. Brown*, 9 Cal. 4th 688, 695, 889 P.2d 557, 560, 38 Cal. Rptr. 363 (1995).

Here, Petitioners' challenges rest on pure speculation.[3] Indeed, the gravamen of Petitioners' constitutional

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[3] In a judicial challenge to Proposition 213 as applied, the California Court of Appeal, Second Appellate District, concluded that Proposition 213 was constitutional. *Yoshioka v. Superior Court*, 58 Cal. App. 4th 972, 978, 68 Cal. Rptr. 553 (1997). In *Yoshioka*, the plaintiff was an uninsured driver who allegedly sustained serious injuries in an automobile accident. *Id.* at 978, 68 Cal. Rptr. 2d at 555. Plaintiff claimed that Proposition 213 violated both the state and federal constitutions on due process and equal protection grounds. *Id.* at 979, 68 Cal. Rptr. at 556. Although the initiative applied retroactively to the plaintiff, the

attack merely "describes heart-rending circumstances of particular plaintiffs whose cases *might* be affected by Proposition 213." *Quackenbush,* 60 Cal. App. 4th at 462, 70 Cal. Rptr. 2d at 275 (1997)[emphasis added]. The Courts, however, have correctly refused to block the express will of millions of California voters without more than a "vague inkling of what the law actually does." *The Coalition for Economic Equity v. Wilson,* 122 F.3d 692, 700 (9th Cir.) cert. denied ___ U.S. ___, 118 S.Ct. 397 (1997). The hypotheticals supporting Petitioners' challenges to Proposition 213 are wholly insufficient to overcome the deference due the expressed will of California's voters. *See, Rodriguez v. Popular Democratic Party,* 457 U.S. 1, 8 (1982).

Petitioners' academic interest in hypothetical applications of the statute therefore fails to establish a compelling reason to grant this petition. See, *Raines v. Byrd,* ___ U.S. ___, ___, fn. 7, 117 S.Ct. 2312, 2320 (1997) [concluding that members of Congress lacked standing to challenge the "Line Item Veto Act" and finding the "various hypotheticals offered" by the Congressmen to "have no applicability. . . . "] The federal courts "lack competence to rule definitively on the meaning of state legislation . . . nor do they adjudicate challenges to state measures absent a showing of actual impact on the challenger. . . . " *Arizonans for Official English v. Arizona,* 520 U.S. 43, 117 S.Ct. 1055, 1059 (1997). Consequently, the petition should be denied since the constitutionality of statutes ought not

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court concluded that the voters' decision to eliminate his recovery of noneconomic damages was constitutional. *Id.* at 981-92.

be decided except in an actual factual setting that makes such a decision necessary. *Pennell v. City of San Jose*, 485 U.S. 1, 10 (1988), citing *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 294-95 (1981).

Petitioners' heart-rending hypotheticals notwithstanding, Proposition 213 is simply a modification to the measure of tort damages recoverable by uninsured drivers who are involved in an automobile accident. This Court has repeatedly declined to intervene in similar situations. For example, where the California State Legislature altered tort rules applicable only to malpractice victims, the Court dismissed the appeals because the cases presented no substantial federal question. *Roa v. Lodi Medical Group*, 37 Cal. 3d 920, 695 P.2d 164, 211 Cal. Rptr. 77 (1985), appeal dismissed for want of a substantial federal question, 474 U.S. 990 (1985); *Fein v. Permanente Medical Group*, 38 Cal. 3d 137, 695 P.2d 665, 211 Cal. Rptr. 368 (1985), appeal dismissed for want of a substantial federal question, 474 U.S. 892 (1985). Both *Roa*, 37 Cal. 3d 920, and *Fein*, 38 Cal. 3d 137, involved constitutional challenges to California's Medical Injury Compensation Reform Act of 1975 (MICRA). Similar to Proposition 213, MICRA places a limit upon the amount of noneconomic damages that a malpractice victim may be awarded, no matter how severely he or she is injured and without regard to the fact that he or she did not, in any way, contribute to the injuries. Cal. Civil Code, § 3333.2, subd. (b) (West 1997). Likewise, the Court has found that challenges to mandatory automobile insurance laws do not raise a substantial question of constitutionality. *Ex Parte Poresky*, 290 U.S. 30 (1933) [denial of leave to file for writ of mandamus under former "three-judge panel" statutes].

The Court has also declined to review California's statutory provision which eliminates punitive damages awards for one class of plaintiffs, i.e., wrongful death plaintiffs. *In re Paris Air Crash*, 622 F.2d 1315 (9th Cir.), cert. denied sub nom., 449 U.S. 976 (1980). Also, the Court recently declined to review another initiative adopted by California's voters – Proposition 209. *The Coalition for Economic Equity v. Wilson*, 122 F.3d at 692, cert. denied, ___ U.S. ___, 118 S.Ct. 397 (1997).

Petitioners' challenges to Proposition 213 fail to raise substantial constitutional questions and the petition should be denied.

II. PROPOSITION 213 IS RATIONALLY RELATED TO LEGITIMATE PURPOSES AND, THEREFORE, THE PETITION DOES NOT PRESENT A SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTION

Proposition 213 clearly passes the rational basis test and, therefore, the initiative does not present a substantial federal question.

A. Proposition 213 Comports with the Equal Protection Clause

The definition of negligence and the effect to be given to it, as a rule of conduct, is subject to legislative modification. *Middleton v. Texas Power & Light Co.*, 249 U.S. 152, 163 (1919) [rejecting due process and equal protection challenges to state statute which replaced negligence damages with workers' compensation awards].

Indeed, "as has been held so often, the liberty of the citizen does not include among its incidents any vested right to have the rules of law remain unchanged for his benefit." *Id.* As the Court reiterated twenty years ago in *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978), " . . . cases have clearly established that a person has no property, no vested interest, in any rule of the common law. The Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object, despite the fact that otherwise settled expectations may be upset thereby."[4] *Id.* at 88, fn. 32 [citations and internal quotations omitted].

California law plainly contemplates the ability to modify the general measure of tort damages set forth in California Civil Code section 3333 (West 1997) ["except where otherwise expressly provided" by the Civil Code, the measure of tort damages is the amount that "will compensate for all the detriment proximately caused thereby. . . . "]. By enacting Civil Code section 3333.4, California's voters decided that automobile accident

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[4] In *Duke Power*, the Court upheld the constitutionality of the Price-Anderson Act's statutory ceiling on recoverable damages, even though the Act carved out the private nuclear power industry for federal treatment in tort liability where, otherwise, state common law would govern. *Duke Power Co.*, 438 U.S. at 93-94. Other legislative alterations in the tort field have withstood constitutional challenge. Of particular interest are the drastic changes in the traditional negligence standard for liability, with the no-fault workers' compensation program being one such illustration. See, *Lower Vein Coal Co. v. Industrial Bd.*, 255 U.S. 144 (1921); *New York Central R.R. v. White*, 243 U.S. 188 (1917).

plaintiffs who are injured while driving in violation of California's mandatory Financial Responsibility Laws will not be awarded noneconomic damages in most situations.[5]

Consistent with the Constitution, the voters could repeal an entire category of damages because they rationally concluded that eliminating noneconomic damages awards to uninsured drivers would address the problem of skyrocketing insurance costs. See, *Duke Power Co.*, 438 U.S. at 88, fn. 2.

As the Court stated in *Vance v. Bradley*, 440 U.S. 93 (1979), "we will not overturn [a statute that does not burden a suspect class or a fundamental interest] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *Id.*, at 97. Speculation regarding other alternatives that may have been, but were not, used to further a legitimate goal is irrelevant to an equal protection analysis. *Duke Power Co.*, 438 U.S. at 94. If any one basis substantiates the classification, the statute must be upheld. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 465 (1981).

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[5] The initiative creates a hierarchy of tort damages awards for persons who are not "personally responsible," with felons being allowed no tort damages for injuries suffered in connection with their commission of the crime, automobile accident plaintiffs who were drunk at the time of their accident being denied noneconomic damages under all circumstances, and automobile accident plaintiffs who were uninsured at the time of the accident being allowed economic damages, but not noneconomic damages. Cal. Civ. Code, § 3333.4 (West 1997).

Petitioners do not attack the purposes[6] of the initiative but, rather, challenge the classification of uninsured drivers. Contrary to Petitioners' assertions, the classification is not arbitrary.

First, there is a longstanding, strong presumption that a legislative body understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. *Middleton v. Texas Power & Light Co.*, 249 U.S. at 157-58. Even though a statute might have been extended to other classes, the failure to do so does not amount to a constitutional objection. *Id.*

In addition, the statutory classification of uninsured drivers is rationally related to the legitimate goal of reducing insurance costs by encouraging drivers to purchase automobile insurance, thereby increasing the pool of insured drivers. In addition, the classification furthers at least one other legitimate goal – restoring balance to our justice system. Eliminating the amount of recovery

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[6] The voter's pamphlet reveals numerous interests the electorate considered in enacting this initiative. Essentially such interests can be narrowed down to two broad concerns the voters took into account: (1) the interest in restoring balance to our justice system and (2) the interest in reducing costs of mandatory automobile insurance. *Yoshioka*, 58 Cal. App.4th at 978, 68 Cal. Rptr.2d at 555 [rejecting an as-applied challenge to the uninsured motorist provisions of Proposition 213]. Addressing concerns over insurance rates constitutes a legitimate state interest. *Dimond v. District of Columbia*, 792 F.2d 179, 186-87 (D.C. Cir. 1986).

for noneconomic damages for uninsured drivers is rationally related to restoring balance to our justice system because it results in a decrease in the amount of litigation filed. *Yoshioka*, 58 Cal.App.4th at 990-91, 68 Cal.Rptr.2d at 563. "Since recovery would be limited to special damages (an easily verifiable amount that encompasses little dispute), pending matters will likely result in settlement. This will ultimately reduce the cost of supporting the court system." *Id.* Having established at least one valid connection, the rational basis test requires no further justification of Proposition 213. *Clover Leaf Creamery Co.*, 449 U.S. at 465.

Petitioners, nonetheless, assert that the statute could have been drafted so as to include other groups, such as uninsured pedestrians (Pet. at 12), drivers who run red lights (Pet. at 13), and other classes of plaintiffs (Pet. at 13). Whether the voters could or should have focused on other plaintiffs is not a substantial federal question because speculation regarding other alternatives that may have been, but were not, selected is irrelevant. *Duke Power Co.*, 438 U.S. at 94. Even if it were assumed that Proposition 213 might be invalid as applied in some particular situation, that does not mean that the initiative is facially invalid. *INS v. National Center for Immigrants' Rights*, 502 U.S. 183, 188 (1991). California's voters therefore validly selected one phase of tort reform – the costs associated with uninsured drivers – and need not apply their chosen remedy to other aspects of California's tort laws.

B. Proposition 213 Does Not Deny Uninsured Drivers Access to Courts

The initiative, contrary to Petitioners' assertion, likewise does not unconstitutionally infringe upon uninsured drivers' access to the court system. While "regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid"[7] (*Procunier v. Martinez*, 416 U.S. 396, 419 (1974) [prisoner's due process right to access the court system]), there is nothing on the face of Proposition 213 that imposes any restriction upon an uninsured driver's ability to prosecute a lawsuit. Petitioners nonetheless claim that complying with California's mandatory insurance laws "in essence" places a cost requirement on uninsured drivers who wish to file lawsuits. Assertions of that nature were found not to be of any constitutional dimension over a half century ago. *Ex*

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[7] There is a distinction between the constitutional right of access to the courts and the constitutional right to counsel. The right of access is a right of "access" and not of "representation." *Cornett v. Donovan*, 51 F.3d 894, 899 (9th Cir. 1995) [rejecting claims of involuntarily committed patients that the right of access required the state to provide law library or legal assistance]. As the California Court of Appeal recognized, the "access to court" argument hinged on Petitioners' view that plaintiffs actually affected by Proposition 213 would be unable to hire attorneys because attorneys' contingency fees normally are paid from noneconomic damages. *Quackenbush*, 60 Cal. App. 4th at 468, 70 Cal. Rptr. 2d at 279. This argument only "implies that the present system for hiring and paying attorneys is sacrosanct and may not be disturbed. It assumes that uninsured litigants and attorneys will be unable to find other ways to structure their relationships. At most, [Petitioners] casts doubt on the wisdom of the measure, not its constitutionality." *Id.*

Parte Poresky, 290 U.S. 30. Similarly, compliance with the state's Financial Responsibility Laws in order to seek noneconomic damages is not a cost requirement in this case. Cf, *Boyden v. Commissioner of Patents,* 441 F.2d 1041, 1045-46 (1971) (Levanthal, concurring) ["By no means does the Constitution embody as a present requirement an egalitarian philosophy that supposes that all men can be put in exactly equal condition as to all matters involving the government. [For example], a man cannot insist that his indigency establishes a constitutional right to drive a car without, e.g., paying the cost of insurance required for the protection of others, or of safety devices and government inspection services."]

Consequently, Petitioners have failed to establish a substantial federal question and the petition should be denied.

C. Proposition 213 Comports with the Due Process Clause

Likewise without merit is Petitioners' request that the Court, by way of the Due Process clause, accept review of their Petition and provide a judicial assessment of the wisdom or fairness of Proposition 213. The Due Process clause is not violated simply because injured persons cannot recover as much as they could prior to the statute's enactment. *Duke Power Co.,* 438 U.S. at 93.

Moreover, as the California Court of Appeal properly found, the issue of whether an uninsured plaintiff could employ a *de facto* insured theory was not before the court. The issue is, likewise, not properly before this Court.

Finally, the requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972). The range of interests protected by procedural due process is not infinite. *Id.* Plainly, however, the underlying right must have come into existence before it can trigger due process protection. *Connecticut Board of Pardons v. Dumschat*, 452 U.S. 458, 463 (1981). As established above, no plaintiff has a vested property interest in recovering any particular type or component of damages. *Duke Power Co.*, 438 U.S. at 59, *Middleton v. Texas Power & Light Co.*, 249 U.S. at 163. Consequently, an uninsured plaintiff has no due process right to a hearing on the issue of why he or she was uninsured.

CONCLUSION

For the reasons stated, the Court should deny the petition for writ of certiorari.

Respectfully submitted,

DANIEL E. LUNGREN,
Attorney General
of the State of California
LINDA A. CABATIC,
Senior Assistant Attorney
General
MARSHA A. BEDWELL,
Supervising Deputy Attorney
General
EILEEN GRAY,
Supervising Deputy Attorney
General
SHELLEYANNE W.L. CHANG,
Deputy Attorney General
LESLIE R. LOPEZ,*
Deputy Attorney General
1300 I Street, P. O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-0973
Facsimile: (916) 323-2137

Attorneys for Respondents
**Counsel of Record*